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6
7 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 CRAIG MASON, Individually and on Behalf
9 of All Other Similarly Situated Persons,

10 Plaintiffs,

11 vs.

12 ASHBRIIT, INC.; TETRA TECH, INC.; and
13 DOES 1 through 100, inclusive,

14 Defendants.
15
16

Case No. 19-cv-01062-DMR

[Case Assigned to the Hon. Magistrate Donna
M. Ryu, Courtroom 4 –3rd Floor, Oakland]

**FIFTH AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES
[F.R.C.P. 23]**

DEMAND FOR JURY TRIAL



1 Plaintiffs CRAIG MASON, on behalf of himself and all others similarly situated,
 2 (collectively “Plaintiffs”) bring this action against Defendants ASHBRIIT, INC. (“AshBritt”) and
 3 TETRA TECH, INC. (“Tetra Tech”) (collectively “Defendants”), and allege, upon information and
 4 belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter
 5 of public record, as follows:

6 1. As alleged herein, Plaintiffs are property owners and residents of the areas of
 7 Northern California affected by the wildfires of October 2017. Plaintiffs suffered harm to real
 8 property and misappropriation of personal property by Defendants, AshBritt and Defendant Tetra
 9 Tech, who were responsible for testing and removing debris and contaminated soil from areas
 10 affected by the fires.

11 2. During the course of debris removal, Defendants performed, oversaw, or directed the
 12 removal of excessive amounts of soil, structures, vegetation, or other land or materials, all of which
 13 were unaffected and uncontaminated by the wildfires. Defendants directed work that caused damage
 14 to or destroyed sidewalks, driveways, wells, and septic tanks. Defendants reported to the owners of
 15 the affected properties that land had been cleaned and tests showed soils were uncontaminated when,
 16 in fact, contaminated soil, debris, and materials remained, requiring further testing and cleanup. The
 17 United States government paid between \$200 and \$300 per ton of debris removed and paid an
 18 estimated five times more per property than any fire cleanup in state history.

19 3. Plaintiffs seek actual or compensatory damages, restitution, equitable relief, costs
 20 and expenses of litigation, including attorneys’ fees, and all additional and further relief that may be
 21 available and that the Court may deem appropriate and just under all of the circumstances,
 22 individually and on behalf of a proposed class defined below (“the Class”).

23 **JURISDICTION AND VENUE**

24 4. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act
 25 (“CAFA”), 28 U.S.C. § 1332.

26 5. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over
 27 Plaintiffs’ California UCL and common law claims because the claims originate from a common
 28 nucleus of operative facts.

6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b)(2) because, inter alia, a substantial portion of the acts and omissions giving rise to Plaintiffs' claims occurred in this judicial district, and under 28 U.S.C. § 1391(c)(2), because Defendants are subject to personal jurisdiction in this state and in this judicial district, such that Defendants are deemed to reside in this state and in this judicial district.

PARTIES

Plaintiff

7. Plaintiff Craig Mason is a resident of the State of California. During the class period, Mr. Mason owned real property in Sonoma County on which Defendants performed cleanup services relating to the Northern California Fires. During the cleanup, Defendants removed excessive amounts of soil, other land, and materials from Mr. Mason's property, resulting in damage to real property, loss of personal property, and annoyance and discomfort. Mr. Mason spent in excess of \$3,000 for materials and the rental of equipment to fill and grade the overexcavated property. Contaminated fire debris was left on Mr. Mason's property after the cleanup, despite the fact that he was informed the contaminated debris had been removed, the remediation of which will require further labor and materials and which decreases the property's value.

Defendants

8. Defendant AshBritt is a Florida corporation with its principal place of business located at 565 E Hillsboro Blvd. in Deerfield Beach, Florida and maintains substantial ongoing business operations in California. AshBritt is in the business of debris removal and disaster-related general contracting. AshBritt contracted with the United States Army Corps of Engineers ("the Army Corps of Engineers") to enter onto private properties affected by the Northern California Wildfires to demolish structures and objects damaged by fire, excavate contaminated soil, clear land, and remove or haul debris.

9. Defendant Tetra Tech is a California corporation with its principal place of business located at 3475 East Foothill Boulevard in Pasadena, California and maintains substantial ongoing business operations in California. Tetra Tech is in the business of consulting, engineering, program

1 management, and construction management. Tetra Tech was contracted to monitor, supervise,
2 inspect, and direct the work of AshBritt and its subcontractors working on the subject properties.

3 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of other Defendants designated herein as Does 1 through 10, inclusive, are presently unknown to
5 Plaintiffs and thus sued by such fictitious names. On information and belief, each of the Defendants
6 designated herein as “Doe” is legally responsible for the events and actions alleged herein, and
7 proximately caused or contributed to the injuries and damages as hereinafter described. Plaintiffs
8 will seek leave to amend this complaint, in order to show the true names and capacities of such
9 parties, when the same has been ascertained.

10 **CLASS ACTION ALLEGATIONS**

11 11. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules
12 of Civil Procedure, on behalf of themselves and the following Class:

13 All owners of real property in Sonoma, Lake, Mendocino, and Napa Counties on
14 whose land Defendants performed cleanup work in relation to 2017 Northern
California wildfire damage from October 2017 to the present. Excluded from this
Class are Defendants and the Judge to whom this case is assigned.

15 Plaintiffs reserve the right to amend this Class definition if discovery or further investigation
16 demonstrates that the Class should be expanded or otherwise modified.

17 a. **Ascertainability of the Class.** The specific members of the Class are
18 identifiable through investigation, Defendants’ records, and records in the
19 possession of State of California and County of Sonoma government
20 agencies.

21 12. **Numerosity of the Class.** The members of the Class are so numerous that joinder of
22 all members would be impracticable. The precise number of members of the Class and their
23 addresses are presently unknown to Plaintiffs but is presumed to be in the thousands. The precise
24 number of persons in the Class and their identities and addresses may be ascertained from
25 investigation, Defendants’ records, and records in the possession of State of California and County
26 of Sonoma government agencies. If deemed necessary by the Court, members of the Class may be
27 notified of the pendency of this action by mail, supplemented by published notice.
28

1 13. **Existence of Predominance of Common Questions of Fact and Law.** There are
 2 questions of law and fact common to the members of the Class that predominate over any questions
 3 affecting only individual members, including:

- 4 a. Whether Defendants established policies and engaged in uniform acts that resulted
 5 in over-excavation of Plaintiffs' soil, destruction of Plaintiffs' property, and failure
 6 to remove contaminated material from Plaintiffs' land;
- 7 b. Whether Defendants trespassed onto Plaintiffs' real property, thereby causing
 8 damage to land;
- 9 c. Whether Defendants interfered with the possessory rights of Plaintiffs' personal
 10 property,
- 11 d. Whether Defendants' conduct violated Business and Professions Code §§ 17200, *et*
 12 *seq.*;
- 13 e. Whether Defendants' conduct otherwise violated California law;
- 14 f. Whether Defendants are jointly or severally liable or otherwise legally responsible
 15 for violations alleged herein under an agency or other theory; and
- 16 g. Whether, as a result of Defendants' misconduct, Plaintiffs are entitled to damages,
 17 restitution, equitable relief or other damages and relief, and, if so, the amount and
 18 nature of such relief.

19 14. **Typicality.** The named Plaintiffs' claims are typical of the claims of the members of
 20 the Class. The named Plaintiffs have no interests antagonistic to those of the Class and are not
 21 subject to any unique defenses.

22 15. **Adequacy.** The named Plaintiffs will fairly and adequately protect the interests of
 23 all members of the Class and have retained attorneys experienced in class action and complex
 24 litigation.

25 16. **Superiority.** A class action is superior to all other available methods for the fair and
 26 efficient adjudication of this controversy for, *inter alia*, the following reasons:

- 27 a. It is economically impractical for members of the Class to prosecute individual
 28 actions;

- 1 b. The Class is readily definable;
- 2 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
- 3 and
- 4 d. A class action will enable claims to be handled in an orderly and expeditious manner,
- 5 will save time and expense, and will ensure uniformity of decisions.
- 6 17. Plaintiffs do not anticipate any difficulty in the management of this litigation.

7 **FACTUAL ALLEGATIONS**

8 **2017 North Bay Wildfire and Preparations for Debris Removal**

9 18. In October 2017, a series of wildfires ignited and spread across Northern California,

10 causing extensive damage throughout Sonoma, Napa, Mendocino, Lake, and other Counties (“the

11 2017 North Bay Wildfires”). The fires claimed the lives of 43 individuals, injured others, burned

12 over 245,000 acres, and destroyed over 14,700 homes.

13 19. On October 10, 2017, the President of the United States declared the 2017 North Bay

14 Wildfires a major disaster and ordered federal aid to supplement recovery efforts in areas affected

15 by the fires. The Federal Emergency Management Agency (“FEMA”) was responsible for

16 coordinating these efforts.

17 20. Under the auspices of FEMA, the Army Corps of Engineers oversaw and coordinated

18 contractors’ clean up and debris removal work as a part of the recovery efforts following the 2017

19 North Bay Wildfires (“the Cleanup Project”).

20 21. Around October 2017, the Army Corps of Engineers contracted with Defendant

21 AshBritt to manage the Cleanup Project. AshBritt, a Florida company, entered into California for

22 the purpose of managing the Cleanup Project.

23 22. Generally, the terms of the Army Corps of Engineers contract with AshBritt required

24 AshBritt to perform initial site reconnaissance and individual site assessments; monitor air quality

25 and prevent storm water pollution; segregate ash, metals, and concrete for transport to appropriate

26 disposal or recycling facilities; finish surfaces and remove topsoil; remove trees; and test soil for

27 contamination. Specifically, the contract required AshBritt perform the following:

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1 Obtain, analyze and evaluate background soil samples to establish cleanup goals for
 2 the project, including asbestos testing. Asbestos testing will not be required if the
 3 Contractor is assuming that all ash is toxic and disposing of it at the proper landfill
 4 location. If this assumption is not made, tests will be required at a rate of one test per
 5000 yd³ of ash.

5 Collect, consolidate, and remove ash and debris for disposal. This material typically
 6 requires special handling and disposal as "designated" or "special" waste at a lined
 7 landfill.

8 Remove three to six inches of soil for reuse or disposal pending waste
 9 characterization. If soil is clean, a landfill may accept it as daily cover.

10 - Upon removing all the debris and three to six inches of soil, sample and analyze the remaining
 11 soil surface for the same constituents identified as clean-up goals.

12 - If results are higher than the threshold for clean-up goals (per the DROP), the Contractor will
 13 remove another layer of soil (from 1/2, inch to 3 inches) for disposal and conduct re-sampling of
 14 the soil. The removal and re-sampling shall be repeated until the remaining soil meets objectives.
 15 - If results are less than the threshold clean-up goals, observe and verify the site preparation for
 16 final erosion control and certification.

16 23. Also in October 2017, Tetra Tech was contracted to collect and test soil, among other
 17 things, on all properties where AshBritt and its debris removal subcontractors performed work.

18 24. Over the course of the months following the beginning of the Cleanup Project,
 19 Defendants were awarded several additional contracts to continue performing work on the Cleanup
 20 Project. Each additional contract included the same terms and requirements described above.

21 **Excessive Excavation & Removal**

22 25. As indicated above, the Army Corps of Engineers contract required the removal of
 23 three to six inches of contaminated soil from the surface of Plaintiffs' properties. Defendants were
 24 then required to sample and analyze the remaining soil surface for additional contamination. If the
 25 contamination levels were higher than the California Human Health Screening Levels set by the
 26

1 Office of Health Hazard Assessment,¹ Defendants were required to remove small layers of soil (one
2 and one-half to three inches at a time) and re-sample until the remaining soil met the safety threshold.

3 26. AshBritt and Tetra Tech instructed or knowingly permitted subcontractors to
4 excavate more than six inches, and in many cases, several feet of soil in locations where no soil had
5 been tested for contamination. Plaintiffs allege that Ashbritt and its subcontractors routinely
6 removed excessive amounts of soil, up to six feet in depth at a time, far more than was necessary to
7 dispose of contaminants, without performing sampling to determine whether the soil was
8 contaminated. Tetra Tech supervisors on site, including “Dewey” and “Liz,” monitored the workers
9 and ratified the removal of excessive amounts of soil without performing sampling to determine
10 whether the soil was contaminated.

11 27. In one instance, workers for Ashbritt and its subcontractors took topsoil from
12 surrounding properties and used it to loosely fill an excavated hole to create the appearance that the
13 land had not been overexcavated. The property owner was forced to pay for the cost to compact and
14 backfill the land.

15 28. In another instance, a property owner working to rebuild his house in Santa Rosa
16 discovered that Ashbritt and its subcontractors had overexcavated the land, removed pieces of the
17 foundation, and loosely poured topsoil to cover it up. Upon the owner’s request, an individual from
18 the office of counsel for the County of Santa Clara inspected the site and determined that it had been
19 overexcavated. The property owner had to pay to compact and backfill the land.

20 29. In another instance, where 30 truckloads of overexcavated soil were removed from
21 a single individual’s land, the Tetra Tech inspector on site admitted to the property owner that the
22 Army Corps of Engineers had made a mistake by paying the contractors by the ton.

23 30. On August 22, 2018, the Director of the California Governor’s Office of Emergency
24 Services (“Cal OES”) sent a letter to the Army Corps of Engineers (referred to in the letter as
25 “USACE”). The letter informed the Army Corps of Engineers that Cal OES discovered
26

27 ¹ “Soil- and Soil-Gas Screening Numbers (California Human Health Screening Levels or
28 CHHSLs),” available at <https://oehha.ca.gov/chhsltable> (last visited January 30, 2019).

1 “unacceptable” work performed as a part of the cleanup effort, including over-excavation,
2 destruction of private property, and false reports of uncontaminated soil.

3 After extensive on-site inspections, the issues we have discovered thus far include,
4 but are not limited to, obvious over-scraping of properties, severe damage to
5 driveway and sidewalks, and damage to wells and septic tanks. Additionally, more
6 than a dozen sites that were deemed cleared by USACE have recently been
7 discovered to contain contaminated ash and fire debris.

8 [...]

9 USACE’s contractors caused substantial damage to many survivors’ properties
10 resulting in revictimization of the affected wildfire survivors. [...] it is clear that
11 USACE’s lack of oversight allowed its contractors to take far more soil than was
12 necessary on hundreds of lots. Given these subcontractors were paid per ton of soil
13 removed, it is probable this over-excavation was an intentional effort to capitalize on
14 this tragedy by defrauding the government.

15 31. The Army Corps of Engineers compensated AshBritt between \$200 and \$300 per ton
16 for the removal of debris, including excavated soil and cut down trees, and transportation of the
17 debris to a disposal site. Because AshBritt’s compensation for excavation was based on the weight
18 of the soil removed, it oversaw and directed the over-excavation of Plaintiffs’ land, with no
19 consideration for contamination levels or the need to remove material and debris, in order to increase
20 the weight of loads and, consequently, its profits.

21 32. Both AshBritt and Tetra Tech personnel were personally involved in overseeing
22 work performed on each property involved in the Cleanup Project. An AshBritt project manager and
23 a Tetra Tech monitor were present at each location on a daily basis. These personnel instructed
24 subcontractors to over-excavate properties where proper testing had not been conducted. AshBritt
25 and Tetra Tech directed or knowingly permitted subcontractors’ over-excavation.

26 33. AshBritt and Tetra Tech informed State and Federal agencies that properties had
27 been cleaned and soil samples showed soil was uncontaminated when either no testing for
28 contamination had occurred on the properties or results of testing for contamination were falsified.

34. The Army Corps of Engineers contract allowed the removal of trees on private
property only when the trees prohibited the debris removal crews from performing their work or if
the trees posed a threat to the debris removal crews. Plaintiffs allege that Defendants routinely
removed trees that did not fit the criteria for removal.

40. Plaintiffs will spend thousands of dollars for further debris removal and backfill services performed by private contractors where their properties were over-excavated. The cost to

1 date of backfilling over-excavated land and removing additional debris is approximately \$8,500 per
 2 property. This does not include costs Plaintiffs have incurred in relation to inspecting or repairing
 3 septic tanks, replacing damaged or destroyed sidewalks or driveways, or testing soil for
 4 contamination and remediation.

5 **CALIFORNIA STATE LAW CLAIMS**

6 41. With regard to the following claims for violations of California State law, the true
 7 names and capacities of DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue such
 8 Defendants by use of such fictitious names. Plaintiffs will amend this complaint to add the true
 9 names when they are ascertained. Plaintiffs are informed and believe and thereon allege that each
 10 of the fictitiously named Defendants is legally responsible for the occurrences herein alleged, and
 11 that Plaintiffs' damages as herein alleged were proximately caused by their conduct.

12 42. With regard to the following claims for violations of California State law, and on
 13 information and belief, at all times herein mentioned, each Defendant was the agent, partner, joint
 14 venturer, representative, or employee of the remaining Defendants, and was acting within the course
 15 and scope of such agency, partnership, joint venture, or employment. Furthermore, in engaging in
 16 the conduct described below, the Defendants were all acting with the express or implied knowledge,
 17 consent, authorization, approval, or ratification of their co-Defendants.

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL AND UNFAIR BUSINESS PRACTICES** 20 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

21 43. Plaintiffs reallege and incorporate the above allegations by reference as if set forth
 22 fully herein.

23 44. Business & Professions Code §§ 17200 *et seq.* prohibits acts of "unfair competition,"
 24 which is defined by Business & Professions Code § 17200 as including "any unlawful, unfair or
 25 fraudulent business act or practice." Defendants' conduct, as described above, constitutes unlawful
 26 and unfair business acts and practices.

27 45. Defendants have violated and continue to violate Business & Professions Code §
 28 17200's prohibition against engaging in "unlawful" business acts or practices by, *inter alia*:

- a. Committing trespass, as set forth below;
- b. Committing conversion, as set for the below; and
- c. Committing trespass to chattels, as set for the below.

46. Defendants' conduct does not benefit competition. Indeed, the injury to Plaintiffs as a result of Defendants' conduct is substantial and far greater than any alleged countervailing benefit.

47. Plaintiffs could not have reasonably avoided the injury each of them suffered.

48. At all relevant times, Defendants exceeded their right of entry onto Plaintiffs' properties.

49. Plaintiffs have suffered injury in fact and lost money or property as a result of Defendants' unlawful and unfair business acts and practices through the wrongful taking of excessive soil from Plaintiffs' properties.

50. By and through its unlawful and unfair business practices and acts described herein, Defendants have obtained valuable property from Plaintiffs and have deprived Plaintiffs of valuable property, all to their detriment.

51. As a result of Defendants' violations of the Business and Professions Code § 17200, Plaintiffs seek an order of this Court enjoining Defendants' continued violations. Plaintiffs also seek an order for restitution, disgorgement, and all other relief allowed under the UCL, including interest and attorneys' fees pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

SECOND CAUSE OF ACTION

TRESPASS

52. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

53. Plaintiffs owned the subject properties.

54. Plaintiffs permitted Defendants to enter onto the subject properties for the purpose of removing debris, ash, and contaminated soil as outlined by Defendants' contract with the Army Corps of Engineers. Defendants were not permitted to excavate uncontaminated or untested soil deeper than six inches or trees that posed no obstacle to access or hazard to worker safety.

1 64. Plaintiffs did not give Defendants permission to remove uncontaminated or untested
2 soil or trees that posed no obstacle to access or hazard to worker safety.

3 65. As a result of Defendants' conduct, Plaintiff suffered a wrongful loss of soil or trees
4 from their properties.

5 66. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

6 67. By the conduct described herein, Defendants have interfered with Plaintiffs'
7 possessory rights wrongfully taken Plaintiffs' personal property. Plaintiffs seek an award of
8 restitution, disgorgement, injunctive relief, and all other relief allowed under California law.

9 **FOURTH CAUSE OF ACTION**

10 **TRESPASS TO CHATTELS**

11 68. Plaintiffs reallege and incorporate the above allegations by reference as if set forth
12 fully herein.

13 69. Plaintiffs owned the soil and trees upon their real property. Once said soil and trees
14 were excavated or severed from the ground, they were transformed into personal property.

15 70. Defendants intentionally interfered with Plaintiffs' possession of soil and trees by
16 knowingly or intentionally taking possession of them and removing them from Plaintiffs' land.

17 71. Plaintiffs permitted Defendants to remove contaminated soil and trees as outlined by
18 Defendants' contract with the Army Corps of Engineers. Defendants were not permitted to excavate
19 uncontaminated or untested soil deeper than six inches or trees that posed no obstacle to access or
20 hazard to worker safety.

21 72. Defendants knowingly or intentionally removed uncontaminated or untested soil
22 deeper than six inches or trees that posed no obstacle to access or hazard to worker safety.

23 73. Plaintiff did not give Defendants permission to remove uncontaminated or untested
24 soil or trees that posed no obstacle to access or hazard to worker safety.

25 74. As a result of Defendants' conduct, Plaintiff suffered a wrongful loss of soil or trees
26 from their properties.

27 75. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.



1 76. By the conduct described herein, Defendants have interfered with Plaintiffs'
2 possessory rights wrongfully taken Plaintiffs' personal property. Plaintiffs seek an award of
3 restitution, disgorgement, injunctive relief, and all other relief allowed under California law.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- A. An order certifying this case as a class action and appointing Plaintiff Craig Mason as class representatives and their counsel the Arns Law Firm to represent the Class;
- B. For actual and compensatory damages according to proof pursuant to the California Civil Code, common law, and all other applicable laws and regulations;
- C. For an order enjoining Defendants from continuing to engage in the conduct described herein;
- D. For restitution and disgorgement to the extent permitted by applicable law;
- E. For civil and statutory penalties available under applicable law;
- F. For pre-judgment and post-judgment interest;
- G. For an award of attorneys' fees, costs and expenses as authorized by applicable law; and
- H. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

/s/ Shounak S. Dharap

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SHOUNAK S. DHARAP
THE ARNS LAW FIRM